

This Opinion is Not a
Precedent of the TTAB

Mailed: December 13, 2023

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Stardust Music Productions, LLC

Serial No. 90804879

Jack A. Wheat of McBrayer PLLC
for Stardust Music Productions, LLC.

Cristel John, Trademark Examining Attorney, Law Office 125,
Robin Mittler, Managing Attorney.

Before Taylor, Adlin and Coggins, Administrative Trademark Judges.

Opinion by Adlin, Administrative Trademark Judge:

Applicant Stardust Music Productions, LLC seeks registration of EVERYDAY HEROES, in standard characters, for: “sound recordings featuring music,” in International Class 9; and “music composition services; entertainment services in the nature of presenting live musical performances; production of music,” in International Class 41.¹ The Examining Attorney refused registration under Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that Applicant’s mark so resembles the previously-registered mark HEROES COTIDIANOS, in standard characters, for: “downloadable television programs provided via a video-on-demand

¹ Application Serial No. 90804879, filed June 30, 2021, under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), based on an alleged intent to use the mark in commerce.

service, featuring a dramatic television series;” in International Class 9 and “entertainment services in the nature of a dramatic television series; entertainment services, namely, providing a website for entertainment purposes containing photographic, video and prose presentations, related film clips and other multimedia materials featuring a dramatic television series,” in International Class 41,² that it is likely to cause confusion. After the refusal became final, Applicant appealed. The appeal is fully briefed.

According to the Cited Registration, “[t]he English translation of ‘HEROES COTIDIANOS’ in the mark is ‘Everyday Heroes.’” Thus, perhaps not surprisingly, this case turns in part on the Doctrine of Foreign Equivalents.

I. Likelihood of Confusion

Our determination under Section 2(d) is based on an analysis of all of the probative evidence of record bearing on the likelihood of confusion. *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973) (“*DuPont*”) (setting forth factors to be considered); *see also In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). We must consider each *DuPont* factor about which there is evidence and argument. *See In re Guild Mortg. Co.*, 912 F.3d 1376, 129 USPQ2d 1160, 1162-63 (Fed. Cir. 2019). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods and services. *See Federated Foods, Inc. v. Fort Howard*

² Registration No. 5060043, issued October 11, 2016; Section 8 Affidavit accepted, Section 15 Affidavit acknowledged (the “Cited Registration”).

Paper Co., 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) (“The fundamental inquiry mandated by § 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks.”).

A. The Goods and Services, Channels of Trade and Classes of Consumers

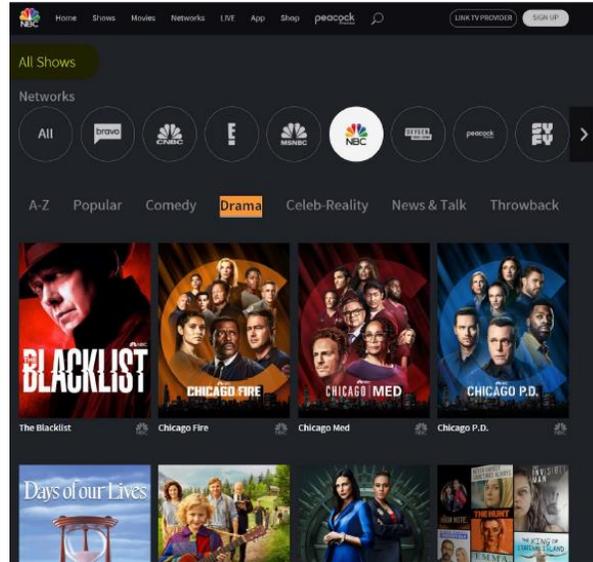
The goods and services need not be identical or even competitive in order to find a likelihood of confusion. Rather, the question is whether the goods and services are marketed in a manner that “could give rise to the mistaken belief that they emanate from the same source.” *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1722 (Fed. Cir. 2012) (quoting *7-Eleven Inc. v. Wechsler*, 83 USPQ2d 1715, 1724 (TTAB 2007)). *See also Hewlett-Packard Co. v. Packard Press Inc.*, 227 F.3d 1261, 62 USPQ2d 1001, 1004 (Fed. Cir. 2002) (“Even if the goods and services in question are not identical, the consuming public may perceive them as related enough to cause confusion about the source or origin of the goods and services.”); *Recot, Inc. v. Becton*, 214 F.3d 1322, 54 USPQ2d 1894, 1898 (Fed. Cir. 2000) (“[E]ven if the goods in question are different from, and thus not related to, one another in kind, the same goods can be related in the mind of the consuming public as to the origin of the goods”).

Here, the Examining Attorney relies on third-party websites in attempting to establish a relationship between the goods and services. *See In re Detroit Athletic Co.*, 903 F.3d 1297, 128 USPQ2d 1047, 1050 (Fed. Cir. 2018) (crediting relatedness evidence showing that third parties use the same mark for the goods and services at issue because “[t]his evidence suggests that consumers are accustomed to seeing a

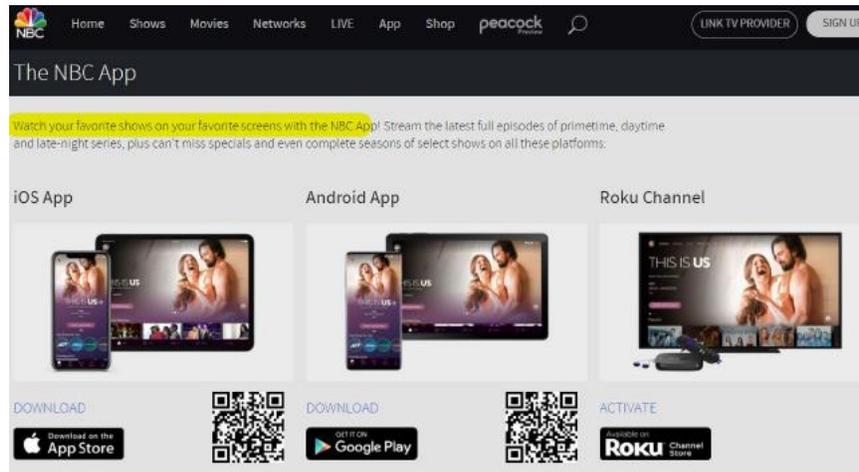
single mark associated with a source that sells both”); *Hewlett-Packard Co.*, 62 USPQ2d at 1004 (evidence that “a single company sells the goods and services of both parties, if presented, is relevant to a relatedness analysis”).

While some of the websites introduced by the Examining Attorney establish that there is a modest relationship between Applicant’s music-related goods in Class 9 and Registrant’s television series-related goods and services, that relationship is tenuous. Indeed, the record shows that a few large media companies offer a wide variety of entertainment products – including television shows and sound recordings – in multiple formats, but the rest of the evidence, including some concerning other large third-party media companies, fails to show any relationship between Applicant’s goods and Registrant’s goods and services. As for Applicant’s Class 41 services, there is only one piece of evidence that would support finding a relationship between them and Registrant’s goods and services, and this is quantitatively and qualitatively insufficient to establish a relationship.

Starting with the persuasive evidence, television network NBC offers a variety of television programs, such as those identified in the Cited Registration, as shown below:



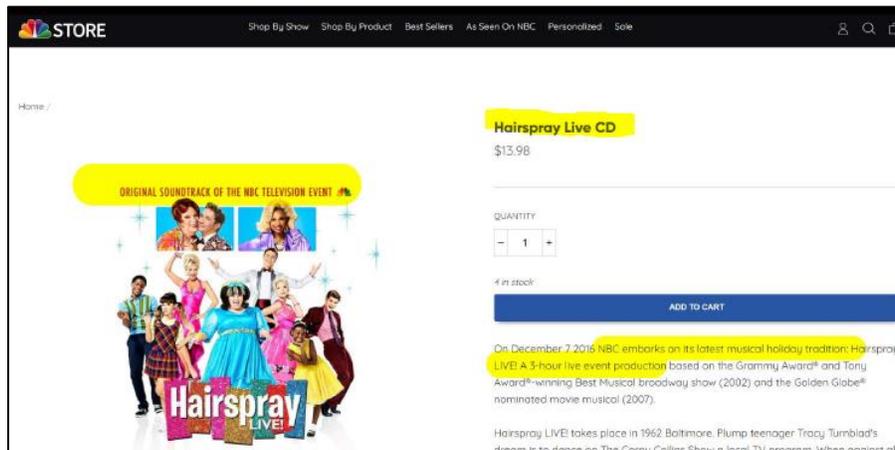
February 16, 2022 Office Action TSDR 10.³ NBC also offers “your favorite shows” on a “video-on-demand” service (app) through which viewers may stream, but apparently not download, programs, as shown below:



Id. at 21 (highlighting added). While the NBC streaming app does not fall within Registrant’s identified “downloadable television programs provided via a video-on-

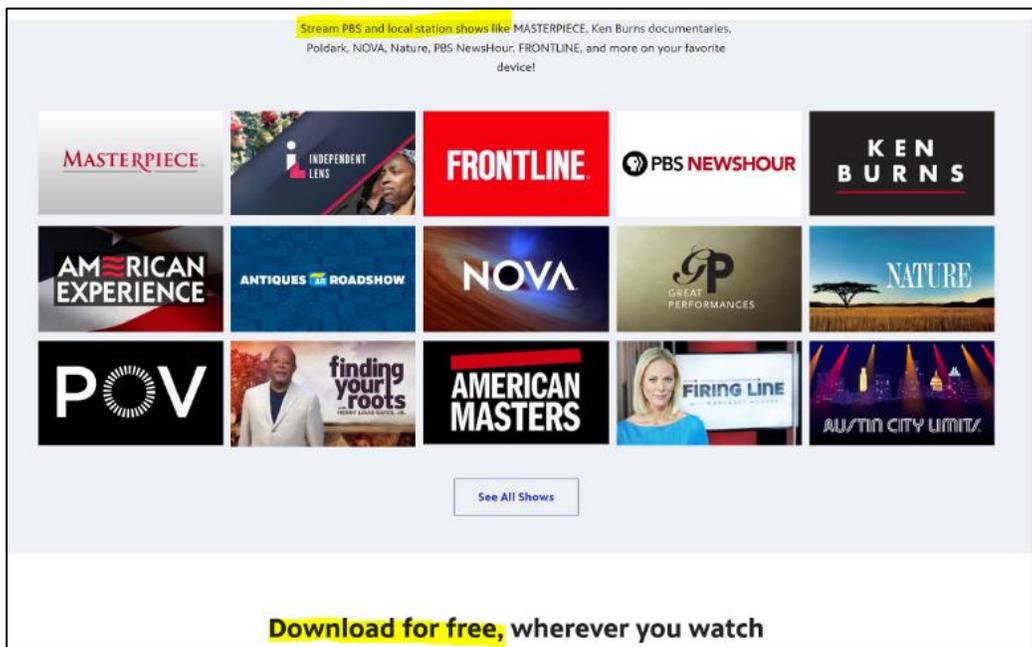
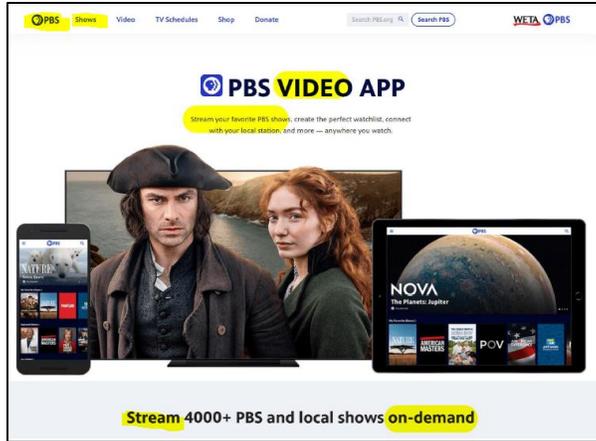
³ Citations to the application file are to the USPTO’s Trademark Status & Document Retrieval (“TSDR”) online database, in the downloadable .pdf format.

demand service ...,” we nonetheless find that the NBC app’s streaming of television programs is similar enough to the Cited Registration’s Class 9 downloadable television programs that it is somewhat relevant. The NBC Store also offers the soundtrack of the “NBC television event Hairspray Live!” on CD, which is encompassed by Applicant’s Class 9 “sound recordings featuring music,” as shown below:

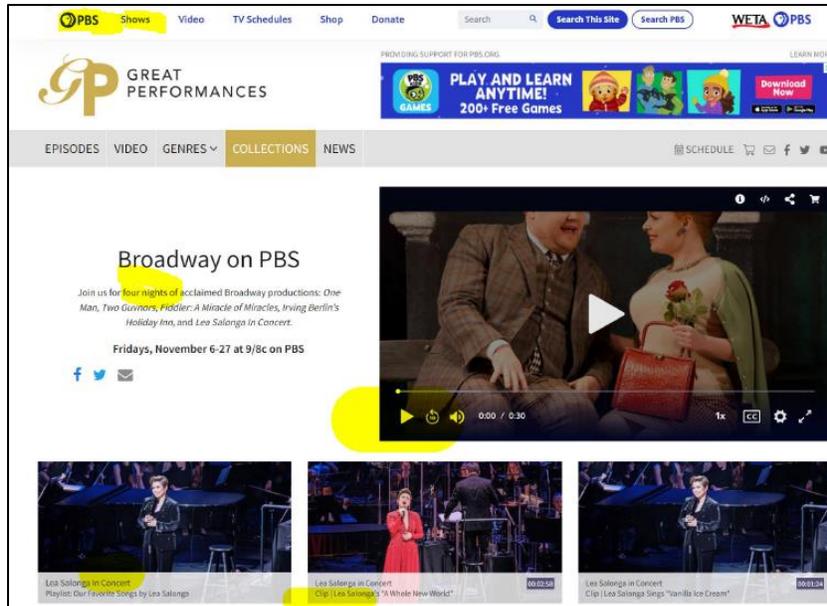


Id. at 18 (highlighting added). However, the “Hairspray Live” CD is a recording of a “live” performance that already took place; it is not an “entertainment service in the nature of presenting live musical performances.” Thus this evidence tends to show a bit of a relationship between Applicant’s Class 9 goods and Registrant’s goods and services (as explained in more detail below), but does not show a relationship between Applicant’s Class 41 services and Registrant’s goods and services.

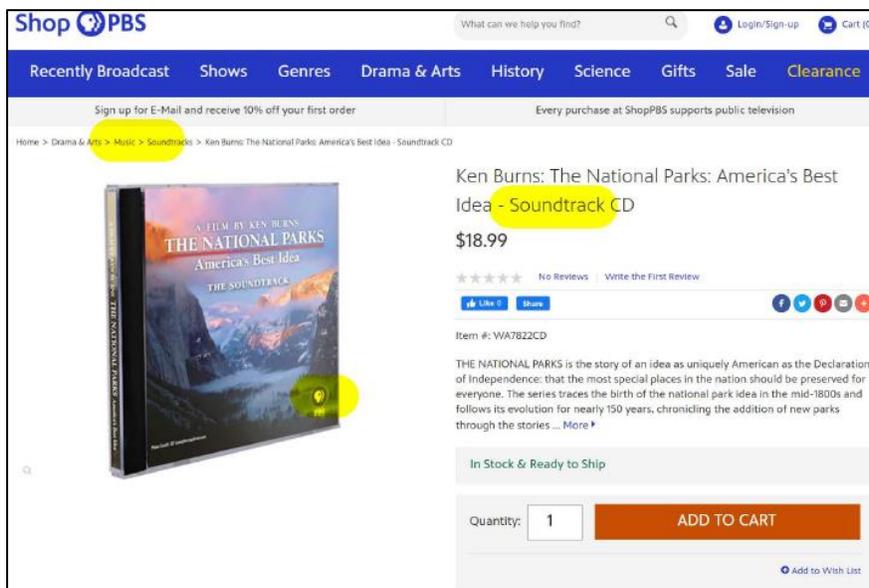
Similarly, PBS offers television programs, such those identified among the Cited Registration’s Class 41 services, as well as an app that provides streaming video-on-demand, similar to the Cited Registration’s Class 9 goods, as shown below:



⁴ There is some ambiguity in this printout from “pbs.org.” It states “Download for free, wherever you watch,” but it is not clear whether “download” refers to television programs or the app itself (based on the context we suspect it refers to downloading the app). Because of this ambiguity, we cannot find that the PBS app allows users to download television series.

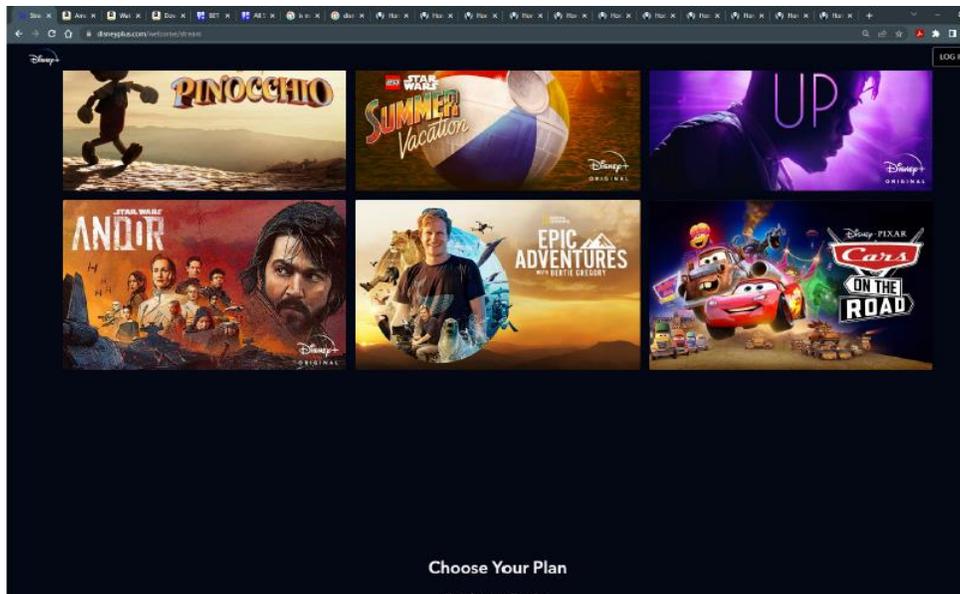
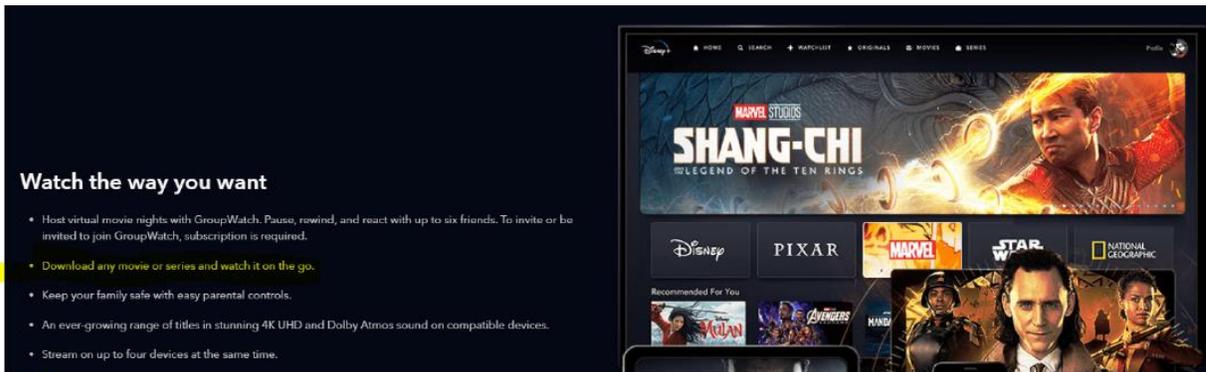


Id. at 24, 31, 32 (highlighting added). While the “Broadway on PBS” shows may feature music, they already took place, and thus do not constitute “live musical performances” of the type identified among Applicant’s Class 41 services. PBS also offers the soundtrack to “Ken Burns: The National Parks: America’s Best Idea” on CD, as shown below:



Id. at 27 (highlighting added). Thus, this evidence suggests that there is a thin relationship between Registrant’s goods and services and Applicant’s Class 9 goods, but not Applicant’s Class 41 services.

Disney presents “live musical performances,” Disney Plus offers “television series” that it makes downloadable, and Disney Music Emporium offers “sound recordings featuring music,” as shown below:





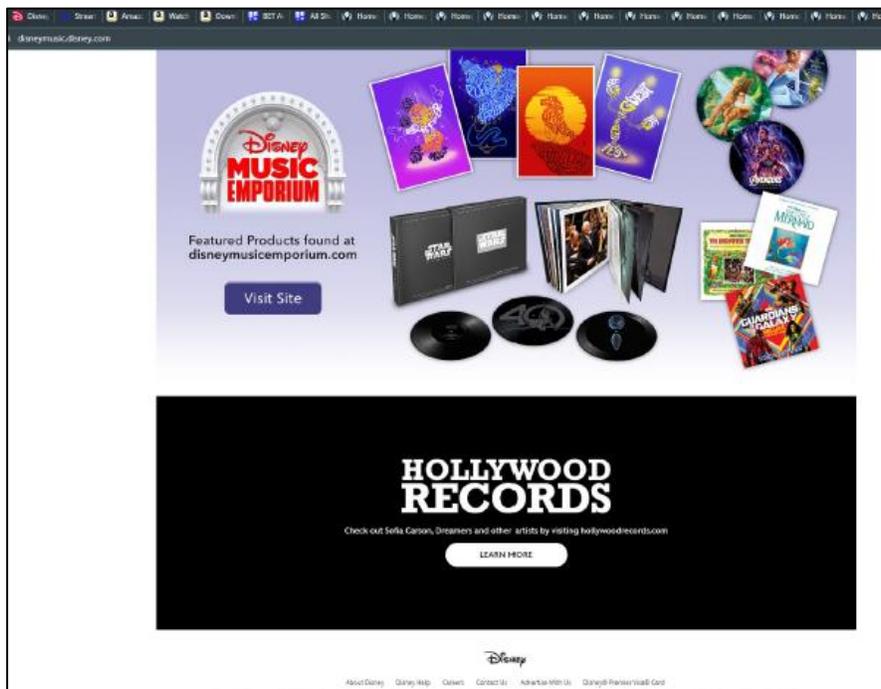
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Disney Junior LIVE ON TOUR COSTUME PALOOZA

Get Tickets

The Pollstar nominated Disney Junior tour is back with an ALL-NEW show, Disney Junior Live On Tour: Costume Palooza! This show brings beloved Disney Junior characters and favorite Marvel Super Heroes together live on stage for a jam-packed, concert-style show with singing, dancing, acrobatics, and more. It will feature favorite songs from hit Disney Junior series, as well as new original music. Mickey, Minnie, and their pals are getting ready to throw a huge costume party but mysterious green rain, wind, and smoke keep interrupting the fun. Can Spidey and his Amazing Friends help save the Costume Palooza? Come join the party!

Disney Junior Live On Tour: Costume Palooza debuts on September 2 and will visit 80 North American cities. Come see Mickey, Minnie, Goofy, Doc McStuffins, Alica, the Puppy Dog Pals, and Marvel's Spidey and his Amazing Friends LIVE on stage!



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September 7, 2022 Office Action TSDR 36, 38, 42, 46 (highlighting added). Thus, this evidence supports a finding of a relationship between Applicant's goods and services in Classes 9 and 41 and Registrant's goods and services in the same classes.

Paramount+ offers television shows that premium subscribers may download. *Id.* at 61-64. Paramount Music also offers "music from" certain television shows and movies, but there is no indication that it offers "live musical performances" or any of Applicant's other Class 41 services. *Id.* at 65. Thus, this evidence also shows some relationship between Registrant's goods and services and Applicant's Class 9 goods, but not Applicant's Class 41 services.

The remaining evidence is much less probative, or not probative, of a relationship between the goods and services. For example, while Sony offers on demand movies and either sound recordings or videos of classical concerts, the specifics of Sony's offerings are not clear from the record. February 16, 2022 Office Action TSDR 36-44. Thus, we cannot determine whether Sony offers downloadable television series, or any television series, or whether the classical concerts Sony offers constitute "sound recordings featuring music."⁵ While Amazon Prime Video offers television series and the ability to download unspecified "video titles," and Amazon Music (with Twitch) offers the ability to "watch artists streaming in the Amazon Music app," it is not clear

⁵ Applicant's "sound recordings featuring music" are in Class 9, a class for goods as opposed to services. Thus, these types of goods are sound recordings that are delivered on some type of media, such as a CD, tape or vinyl record, or are downloadable such that the purchaser can replay them. The record shows that streamed sound recordings are typically not downloadable, and are instead ephemeral and provided to but not owned by the listener, and would not fall within Class 9. Streaming is a service, not a good.

from this record that Amazon Prime Video’s customers may download television series as opposed to other “video titles,” or that Amazon Music offers “sound recordings featuring music” or “live musical performances,” let alone Applicant’s Class 41 “music composition services” or “production of music.” September 7, 2022 Office Action TSDR 15-21. We may only rely on the record presented by the Examining Attorney. BET offers television series, but it is unclear whether they may be downloaded, and its website provides links to recordings of past, but not “live,” musical performances. *Id.* at 22-34. There is no indication in the record that BET offers “sound recordings featuring music,” “music composition services” or “production of music.” The “warnerbros.com” website directs visitors to numerous television shows, and the streaming services from which they may be accessed, and Warner Music Group’s website offers “sound recordings featuring music.” *Id.* at 88-92. While we assume that these shows have some connection to Warner Bros., it is not clear whether any of them are downloadable, let alone from Warner Bros. More importantly, there is no indication that Warner Bros. and Warner Music Group are related. In fact, in contrast to other examples in the record, such as Disney and Disney Music Group, and Amazon Prime Video and Amazon Music, this record does not show that Warner Bros. and Warner Music Group use the same logos or trade dress. We are unable to infer or assume a connection between these “Warner” entities based solely on their shared use of “Warner” in their names.

The Examining Attorney’s evidence is insufficient to show a relationship between Applicant’s Class 41 services and Registrant’s goods or services. In fact, only one

mark – DISNEY – is used for “live musical performances” on the one hand and “television series” and “downloadable television programs” on the other. In the Disney evidence provided by the Examining Attorney, DISNEY serves as a house mark, with the “product” marks being DISNEY PLUS in the case of downloadable television series and DISNEY JUNIOR in the case of live musical performances. This single piece of evidence is insufficient by itself to establish a relationship between Applicant’s Class 41 services and Registrant’s goods and services, and thus this factor weighs against finding a likelihood of confusion with respect to Applicant’s Class 41 services.

As for Applicant’s Class 9 “sound recordings,” the DISNEY and PARAMOUNT evidence is most persuasive, because these marks are used for sound recordings as well as downloadable television series. As indicated, the NBC and PBS evidence is less persuasive, but still tends to support a finding of a relationship, because the NBC and PBS marks are used for sound recordings and streaming (as opposed to downloadable) television series. These four examples are barely sufficient to show that there is some type of relationship between Applicant’s Class 9 goods and Registrant’s goods and services, but we find that they ultimately do weigh, slightly, in favor of finding a likelihood of confusion with respect to Applicant’s Class 9 goods.⁶

⁶ It is not just the limited quantity of this evidence that reduces its value. The quality is also lacking. Indeed, the record shows that Disney, Paramount, NBC and PBS are large media companies that offer a panoply of entertainment goods and services, from movies to television shows to sound recordings to streaming services to apps that allow users to take entertainment on the go. In some ways, these companies are the entertainment/media equivalent of “big box” or department stores, offering many entertainment goods and services “under one roof.” In the analogous context of big box and department store retailers, we have

The evidence is somewhat stronger with respect to the channels of trade and classes of consumers. The record establishes that music and television series are sold or otherwise offered by the same entertainment-focused companies that target the general public, even if the music and television series are not always offered in the forms of “sound recordings,” “live” musical performances or “downloadable” television series. Moreover, music and television series are often offered in the same ways, such as hard media, streaming or downloads. Some television series feature music that may be offered as a separate product, such as soundtracks from television shows, and some television series focus on music, such as the television series covering Broadway musicals or concerts. Finally, consumers of Applicant’s and Registrant’s identified goods and services are “ordinary,” have a variety of tastes in entertainment and do not generally have specialized knowledge or experience. Thus, the channels of trade and classes of consumers weigh in favor of finding a likelihood of confusion with respect to Applicant’s Class 9 goods and Class 41 services.

B. The Marks

We consider the marks “in their entirety as to appearance, sound, connotation and commercial impression.” *Palm Bay Imps. Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005)

found that evidence such as that the Examining Attorney introduced in this case is less persuasive than evidence derived from more focused or specialized third parties. *See e.g. Morgan Creek Prods., Inc. v. Foria Int’l, Inc.*, 91 USPQ2d 1134, 1142 (TTAB 2009) (“It has long been held that the mere fact that two different items can be found in a supermarket, department store, drugstore or mass merchandiser store is not a sufficient basis for a finding that the goods are related.”).

(quoting *DuPont*, 177 USPQ at 567). Here, the Examining Attorney argues that “Applicant’s proposed mark, ‘EVERYDAY HEROES’, is likely to be confused with the Registrant’s mark, ‘HEROES COTIDIANOS’ because the applied for mark is a literal and direct translation of the registered mark pursuant to the doctrine of foreign equivalents.” 6 TTABVUE 3.⁷

Under the doctrine of foreign equivalents, foreign words from common languages are translated into English to determine similarity of connotation with English word marks. See *Palm Bay Import, Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689 (Fed. Cir. 2005). The doctrine is applied when it is likely that “the ordinary American purchaser would ‘stop and translate [the term] into its English equivalent.” *Palm Bay*, supra at 1696, quoting *In re Pan Tex Hotel Corp.*, 190 USPQ 109, 110 (TTAB 1976).

In re Thomas, 79 USPQ2d 1021, 1024 (TTAB 2006). As Applicant points out, however, “the doctrine of foreign equivalents is not an absolute rule and should be viewed merely as a guideline.” *Palm Bay*, 73 USPQ2d at 1696.

1. The Doctrine of Foreign Equivalents Does Not Apply

Of course, Spanish is a “common language” in the United States. February 16, 2022 Office Action TSDR 8-9; September 7, 2022 Office Action TSDR 9-14. We have routinely applied the doctrine of foreign equivalents to Spanish language marks. *In re Aquamar, Inc.*, 115 USPQ2d 1122, 1127 (TTAB 2015); *In re La Peregrina Ltd.*, 86 USPQ2d 1645, 1648 (TTAB 2008) (“there is no question that Spanish is a common,

⁷ Citations to the appeal record are to TTABVUE, the Board’s online docketing system. The number preceding TTABVUE corresponds to the docket entry number, and any numbers following TTABVUE refer to the page(s) of the docket entry where the cited materials appear.

modern language”); *In re Perez*, 21 USPQ2d 1075 (TTAB 1991); *In re Am. Safety Razor Co.*, 2 USPQ2d 1459 (TTAB 1987); *In re Hub Distrib., Inc.*, 218 USPQ 284 (TTAB 1983); *Rosenblum v. George Willsher & Co.*, 161 USPQ 492 (TTAB 1969). Moreover, there is no dispute that the Spanish word “COTIDIANOS” in Registrant’s mark may be translated as “everyday.” September 7, 2022 Office Action TSDR 6-8.

Where we part with the Examining Attorney is her finding that “the ordinary American purchaser would likely stop and translate the mark because the Spanish language is a common, modern language spoken by an appreciable number of consumers in the United States.” 6 TTABVUE 5. We do not agree that Spanish being spoken by American consumers is enough in and of itself to invoke the doctrine. Indeed, if it was, the doctrine of foreign equivalents would cease to be a mere “guideline,” as *Palm Bay* tells us it must be, and would instead become an “absolute rule,” at least with respect to marks in Spanish and other “common” languages.

We also find that there are reasons why American consumers would not “stop and translate” here. Registrant’s mark is in two different languages, English (“HEROES”) and Spanish (“COTIDIANOS”). We have previously declined to apply the doctrine of foreign equivalents in an analogous situation. *In re Taverna Izakaya LLC*, 2021 USPQ2d 1134 (TTAB 2021) (reversing descriptiveness refusal of TAVERNA COSTERA for restaurant services based on doctrine of foreign equivalents, because the mark’s constituent terms are in different languages). As we found in *Taverna Izakaya*:

Because the evidence of record does not support a finding that consumers would stop and translate the two different-

language words comprising the TAVERNA COSTERA mark and instead would perceive the mark as it is, we decline to apply the doctrine of foreign equivalents. The mark as a whole is not descriptive and at most it suggests, through the use of this particular combination of words from multiple languages, a “fusion” of cuisines. *See Estate of P.D. Beckwith, Inc. v. Comm’r of Patents*, 252 U.S. 538, 545-46 (1920) (“The commercial impression of a trademark is derived from it as a whole, not from its elements separated and considered in detail. For this reason it should be considered in its entirety ...”); *see also [In re] Universal Package [Corp.]*, 222 USPQ [344, 347 (TTAB 1984] (use of the French article LE with the English word CASE changes the mark’s commercial impression, and “imparts to the mark a French flavor, a continental connotation which is presumably desirable from the perspective of manufacturers of jewelry boxes”).

Id. at *11.⁸

Here we find similarly that consumers would not translate just one of the words in Registrant’s two-word mark, but would instead take it “as it is.” *In re Tia Maria, Inc.*, 188 USPQ 524. 525-26 (TTAB 1975) (“there are foreign expressions that even those familiar with the language will not translate, accepting the term as it is”). In fact, it is not clear from either the cited mark itself, or from the mark’s use in connection with television programs, that one or both of the mark’s constituent terms are supposed to be translated, much less to which language.

Rather, just as TAVERNA COSTERA suggests a “fusion” of cuisines and LE CASE imparts “a French flavor, a continental connotation,” HEROES COTIDIANOS may

⁸ Moreover, there is at least some ambiguity in the Examining Attorney’s translation evidence. *Compare* September 7, 2022 Office Action TSDR 7-8 (translating Applicant’s mark to “everyday heroes”) *with id.* at 9 (translating “cotidianos” as “dailies” and “cotidiano” as “everyday” as well as “quotidian,” “ordinary” and “routine”).

perhaps convey a television show about a mixed group of heroes with different backgrounds, or that some of the show's "heroes" speak English and some speak Spanish. Perhaps the mark is intended to identify a television show popular with both English and Spanish speakers. While the record does not reveal why the cited mark is in two languages, whatever the reason, here we find that as in *Taverna Izakaya*, *Universal Package* and other cases, consumers would be unlikely to translate the Spanish word "COTIDIANOS" when the mark also includes an English word. See *In re Sweet Victory, Inc.*, 228 USPQ 959, 960-61 (TTAB 1986) ("juxtaposition of the French word 'GLAC,' with the English word 'LITE' changes the commercial impression of the mark and makes the expression a somewhat more incongruous one"); *In re Universal Package*, 222 USPQ2d at 347 ("Translation of an entire compound word mark is more likely to take place in the marketplace than is the translation of only part of the mark."); *French Transit, Ltd. v. Modern Coupon Sys., Inc.*, 818 F.Supp. 635, 29 USPQ2d 1626 (S.D.N.Y. 1993) (finding that doctrine of foreign equivalents does not apply to LE CRYSTAL NATUREL because it includes both French (LE and NATUREL) and English (CRYSTAL) terms, pointing out that evidence indicated that two languages were used "to highlight that the product was imported from France") (citing *Universal Package*).

2. Comparing Applicant's Mark to the Cited Mark "As It Is"

Because we have found that applying the doctrine of foreign equivalents is inappropriate here, we now compare EVERYDAY HEROES to HEROES COTIDIANOS "in their entireties as to appearance, sound, connotation and

commercial impression.” *Palm Bay*, 73 USPQ2d at 1691. When we do, we find that even though the marks share the term “HEROES,” they are not confusingly similar.

The shared term “HEROES” is in a different position in each mark, and EVERYDAY, the first part of Applicant’s mark, and COTIDIANOS, the last part of the cited mark, look and sound completely different. Thus, the marks are more dissimilar than similar in appearance and sound. Moreover, because the cited mark is in two different languages, it is a somewhat incongruous and unitary term, and we would not expect consumers to focus on the shared term “HEROES” by itself, apart from “HEROES COTIDIANOS.” Thus, the nature of the cited mark essentially deemphasizes the importance of the shared term HEROES, as opposed to the unitary term HEROES COTIDIANOS.

As for meaning and commercial impression, Applicant’s mark conveys a musical group made up of “everyday heroes,” perhaps a group of ordinary but admirable or courageous musicians. By contrast, the cited mark conveys a television show about heroes of some type, but would be unlikely to convey a more specific meaning or give a commercial impression beyond that, because the mark’s somewhat incongruous combination of “HEROES” with the Spanish language term “COTIDIANOS” leaves its intended meaning mysterious. Furthermore, Americans who do not speak Spanish would be unlikely to understand the word “COTIDIANOS” even if they wanted to “stop and translate” it, which we find they would not. While both marks impart the commercial impression of heroes or heroism, there is a significant difference between “heroes” that perform in a musical group and “heroes” that are the subject of a

television show. Thus, we find that the marks convey somewhat different meanings and create fairly different commercial impressions.

Indeed, to the extent consumers focus solely on the term “HEROES,” that would not be enough by itself to result in likely confusion, precisely because Applicant’s mark is intended to be used for a musical group while Registrant’s is used for a television show. As we held in somewhat analogous circumstances in *Tia Maria*

[I]t is unlikely to expect that a person encountering “AUNT MARY’S” canned fruits and vegetables in a supermarket or other establishment where goods of this type are customarily sold would translate “AUNT MARY’S” into “TIA MARIA”, and then go one step further and associate these food products with applicant’s restaurant. Likewise, going the other route, it is difficult to perceive that a person who had purchased “AUNT MARY’S” canned fruits and vegetables on the shelves of a supermarket would, upon dining at the “TIA MARIA” restaurant in Mexican decor and surrounded by a menu of Mexican delicacies, translate “TIA MARIA” into “AUNT MARY” and then mistakenly assume that the “TIA MARIA” restaurant and “AUNT MARY’S” canned fruits and vegetables originate from or are sponsored by the same entity. This stretches a person’s credulity much too far.

In re Tia Maria, 188 USPQ2d at 525-26. In other words, the tenuous relationship between Applicant’s goods and Registrant’s goods and services, and the absence of a relationship between Applicant’s services and Registrant’s goods and services will impact consumers’ perceptions of the marks. Just as consumers would not associate the source of canned fruits and vegetables sold in supermarkets with the source of restaurant services, consumers will be unlikely to assume that the source of the HEROES COTIDIANOS television series is also the source of EVERYDAY HEROES music and live musical performances.

In short, the dissimilarity between the marks weighs against finding a likelihood of confusion.

II. Conclusion

The marks are more dissimilar than similar despite sharing the word “HEROES,” and the evidence does not establish a relationship between Applicant’s services and any of Registrant’s goods or services. There is thus no likelihood of confusion between EVERYDAY HEROES for Applicant’s Class 41 services and HEROES COTIDIANOS for Registrant’s goods or services. The marks are also too different for confusion to arise with respect to Applicant’s Class 9 goods, even though the record shows that there is a modest relationship between these goods and Registrant’s goods and services, and that the channels of trade and classes of consumers overlap.

Decision: The refusal to register Applicant’s mark under Section 2(d) of the Trademark Act is reversed.